

ENTERED

March 18, 2021

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION****UNITED STATES OF AMERICA,
Plaintiff,****v.****MIGUEL ANTONIO RAMOS,
Defendant.**§
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§**CRIMINAL NO. 2:17-62****MEMORANDUM OPINION & ORDER**

Pending before the Court is Defendant Miguel Antonio Ramos' letter motion for compassionate release. D.E. 55. For the reasons stated below, his motion is **DENIED**.

I. BACKGROUND

On March 2, 2017, Defendant pled guilty to tampering with a witness. He has served 52 months (62%) of his 84-month sentence and has a projected release date, after good time credit, of September 24, 2023. He now moves the Court for compassionate release due to his health and so that he can care for his ailing mother.

II. LEGAL STANDARD

The statute, 18 U.S.C. § 3582(c)(1)(A), authorizes a court to reduce a defendant's sentence under limited circumstances:

(c) Modification of an Imposed Term of Imprisonment.—
The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has *fully exhausted all administrative rights* to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days

from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

(i) *extraordinary and compelling reasons warrant such a reduction . . .* and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

18 U.S.C. § 3582(c)(1)(A)(i) (emphasis added).

“Although not dispositive, the commentary to the United States Sentencing Guidelines (‘U.S.S.G.’) § 1B1.13 informs [the Court’s] analysis as to what reasons may be sufficiently ‘extraordinary and compelling’ to merit compassionate release.” *United States v. Thompson*, 984 F.3d 431, 433 (5th Cir. 2021) (citing *United States v. Rivas*, 833 Fed. App’x 556, 558 (5th Cir. 2020)).

(A) Medical Condition of the Defendant.—

(i) The defendant is suffering from a terminal illness (i.e., a serious and advanced illness with an end of life trajectory). A specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

(ii) The defendant is—

- (I) suffering from a serious physical or medical condition,
- (II) suffering from a serious functional or cognitive impairment, or
- (III) experiencing deteriorating physical or mental health because of the aging process,

that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

(B) Age of the Defendant. –

The defendant is (i) at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less;

(C) Family Circumstances. –

(i) The death or incapacitation of the caregiver of the defendant's minor child or minor children.

(ii) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(D) Other Reasons. –

As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary or compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

U.S.S.G. § 1B1.13(1)(A), Application Note 1.

Even if “extraordinary and compelling reasons” for early release exist, the Guidelines’ policy statements provide for a reduction in sentence only if a defendant “is not a danger to the safety of any other person or the community, as provided in 18 U.S.C. §3142(g).” U.S.S.G. § 1B1.13(2). Factors relevant to this inquiry include: (1) the nature and circumstances of the offenses of conviction, including whether the offense is a crime of violence, or involves a minor victim, a controlled substance, or a firearm, explosive, or destructive device; (2) the weight of the evidence; (3) the defendant's history and

characteristics; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release. *See* 18 U.S.C. § 3142(g).

The Court must also consider whether a reduction is consistent with the applicable section 3553(a) factors. *See* 18 U.S.C. § 3582(c)(1)(A); U.S.S.G. § 1B1.13. The applicable statutory factors include, among others: the defendant's history and characteristics; the nature and circumstances of the offense; the need for the sentence to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense; the need to deter criminal conduct and protect the public from further crimes of the defendant; the need to provide the defendant with, among other things, any needed medical treatment; and the various kinds of sentences available. *See* 18 U.S.C. §§ 3553(a)(1)-(7).

"In general, the defendant has the burden to show circumstances meeting the test for compassionate release." *United States v. Stowe*, 2019 WL 4673725, at *2 (S.D. Tex. Sept. 25, 2019).

III. ANALYSIS

Defendant is 48 years old. He moves for compassionate release "due to my health," but he does not identify any specific medical condition that would qualify as extraordinary.

Defendant further wishes to care for his disabled mother, who lives alone and recently tested positive for COVID-19. He states that she also suffers from depression, anxiety, and diabetes, and receives injections in her back. Unfortunately for Defendant, "caring for a sick and/or aging parent is not a qualifying 'family circumstance' under U.S.S.G. § 1B1.13(1)(A)." *United States v. Hudec*, No. 4:91-CR-1-1, 2020 WL 4925675, at *5 (S.D. Tex. Aug. 19, 2020) (collecting cases). "Many, if not all inmates, have aging

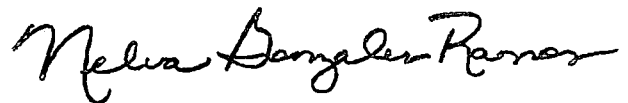
and sick parents. Such circumstance is not extraordinary.” *United States v. Ingram*, 2019 WL 3162305, at *2 (S.D. Ohio July 16, 2019) (denying compassionate release to defendant to care for ill mother).

Finally, Defendant did not exhaust his administrative remedies before filing the current motion. He emailed the warden at Terre Haute USP requesting a sentence reduction because “I have been incarcerated since 2016 and I am 48 years old. I believe that I am a good candidate for compassionate release.” D.E. 55-1. However, his request did not mention his health or caring for his mother, which is the basis for his motion for compassionate release. Because Defendant has failed to comply with the exhaustion requirements under § 3582, his motion is not ripe for review, and the Court is without jurisdiction to grant it. *See generally Ross v. Blake*, 136 S. Ct. 1850, 1856–57 (2016).

IV. CONCLUSION

For the foregoing reasons, Defendant’s letter motion for compassionate release (D.E. 55) is **DENIED**.

ORDERED March 18, 2021.



NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE